

EXPOSURE DRAFT

EXPLANATORY STATEMENT

Issued by the authority of the Assistant Minister to the Minister for Industry, Energy and Emissions Reduction

Offshore Electricity Infrastructure (Regulatory Levies) Act 2021

Offshore Electricity Infrastructure (Regulatory Levies) Regulations 2022

Purpose and Operation

The *Offshore Electricity Infrastructure Act 2021* (OEI Act) establishes a legal framework to enable the construction, installation, commissioning, operation, maintenance, and decommissioning of offshore electricity infrastructure (OEI) in the Commonwealth offshore area. It is accompanied by the *Offshore Electricity Infrastructure (Regulatory Levies) Act 2021* (OEI Levies Act), which prescribes an OEI levy that certain OEI participants must pay. Both Acts will commence on 2 June 2022.

Section 10 of the OEI Levies Act provides that the Governor-General may make regulations prescribing matters required or permitted by the OEI Levies Act or necessary or convenient for carrying out or giving effect to the OEI Levies Act. The OEI Levies Act contains provisions providing for the making of regulations to establish the amounts and operating parameters of the OEI levy.

The present regulation, the *Offshore Electricity Infrastructure (Regulatory Levies) Regulations 2022* (OEI Levies Reg), establishes the amounts and operating parameters of the OEI levy for the purposes of the OEI Levies Act.

Background

It is intended that the Commonwealth will administer the OEI framework on a cost recovery basis. The OEI levy provides one part of the Commonwealth's cost recovery arrangements.

Parts 1 and 2 respectively of Chapter 5 of the OEI Act establish the Offshore Infrastructure Registrar (the Registrar) and the Offshore Infrastructure Regulator (the Regulator) to administer and regulate the OEI framework. In addition, the relevant Commonwealth Government Department is responsible for ongoing oversight of the framework.

Part 3 of Chapter 5 of the OEI Act then sets out provisions permitting the Commonwealth to recover any costs associated with administering or regulating the OEI framework. These cost recovery arrangements comprise the payment of fees and levies by OEI participants:

- Under subsection 189(1) of the OEI Act the Commonwealth (including the Regulator or Registrar) may charge a fee for dealing with an application made, performing functions, or exercising power under the OEI Act or the applied work health and

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safety provisions. The applicable fees are prescribed in Part 3 of the *Offshore Electricity Infrastructure Regulations 2022* (OEI Reg).

- Under subsection 190(1) of the OEI Act certain OEI participants must also pay levies where applicable under the OEI Levies Act and prescribed by regulations made under that Act. The present regulation, the OEI Levies Reg, establishes the amounts and operating parameters of the OEI levy. Some additional operating parameters are also prescribed in Part 4 of the OEI Reg.

The OEI levy is intended to fund ongoing activities of the Commonwealth (including the Regulator or Registrar) that cannot be attributed to a specific OEI licence or participant. In this sense, levies provide for cost recovery of functions that are not specifically “fee for service”. Examples of the types of activities levies might fund include ongoing stakeholder engagement, the development of guidance material, the provision of legislative and policy support, licence compliance, monitoring, enforcement and inspection, and the reporting and handling of information.

Authority

Section 10 of the OEI Levies Act provides that the Governor-General may make regulations prescribing matters required or permitted by the OEI Levies Act or necessary or convenient for carrying out or giving effect to the OEI Levies Act.

The OEI Levies Act also sets out the relevant heads of power which provide for specific regulations for the aspects of the OEI levy set out in the OEI Levies Reg, including the imposition of the levy in section 8 and the amounts of the levy in section 9.

Regulatory Impact

A Regulatory Impact Statement (RIS) was prepared for the OEI Act (OPBR reference number 42703), to which the OEI Levies Act relates. This RIS was included in the Explanatory Memorandum for the OEI Act. The Office of Best Practice Regulation has advised that no further RIS is required for the OEI Levies Reg.

Details of the Offshore Electricity Infrastructure (Regulatory Levies) Regulations 2022

PART 1 – PRELIMINARY

Section 1 – Name

Section 1 provides that the title of the OEI Levies Reg is the *Offshore Electricity Infrastructure (Regulatory Levies) Regulations 2022*.

Section 2 – Commencement

Section 2 provides that the OEI Levies Reg commences on the later of:

- the day after it is registered on the Federal Register of Legislation; or
- the commencement of the *Offshore Electricity Infrastructure (Regulatory Levies) Act 2021*.

Section 3 – Authority

Section 3 provides that the OEI Levies Reg is made under the *Offshore Electricity Infrastructure (Regulatory Levies) Act 2021*.

Section 4 – Definitions

Section 4 provides a general definition clause.

“Act” means the *Offshore Electricity Infrastructure (Regulatory Levies) Act 2021*.

“Commercial licence”, “feasibility licence”, “licence”, “research and demonstration licence” and “transmission and infrastructure licence” have the same meaning as the corresponding terms in the *Offshore Electricity Infrastructure Act 2021*.

PART 2 – AMOUNTS OF LEVY

As noted above, the OEI Levies Act prescribes an OEI levy that certain OEI participants must pay. Specifically, paragraph 8(1)(a) of the Act provides that an offshore electricity infrastructure levy is imposed on a person who is an offshore electricity infrastructure licence holder. In practical terms, this means that any holder of a feasibility, commercial, research and demonstration or transmission and infrastructure licence must pay an OEI levy.¹

The amounts and operating parameters of the OEI levy are left to be established by regulations. Subsection 8(2) of the OEI Levies Act provides that the regulations may impose different kinds of OEI levy on OEI licence holders. Subsection 8(3) provides that such kinds of OEI levy may, amongst other things, relate to a period during which a licence holder holds

¹ See the definition of “offshore electricity infrastructure licence holder” in section 7 of the OEI Levies Act in conjunction with the definition of “licence” in section 8 of the OEI Act.

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a licence or to a specific regulatory or compliance activity undertaken by the Commonwealth (including the Regulator or Registrar) relating to a licence. Finally, section 9 provides that the amounts of OEI levy must be either set out in the regulations or else worked out in accordance with a method prescribed in the regulations.

Part 2 of the OEI Levies Reg provides, for the purposes of sections 8 and 9 of the OEI Levies Act, a framework covering the amounts and operating parameters of the OEI levy. Note that some additional operating parameters, such as the timing of levy payments, the recipients of the different kinds of levy and the handling of levy refunds, are prescribed in Part 4 of the OEI Reg.

Section 5 – Levies imposed on holders of feasibility licences

The table in section 5 of the OEI Levies Reg sets out, for the purposes of subsection 8(2) and section 9 of the OEI Levies Act:

- the different kinds of OEI levies imposed on feasibility licence holders;
- the amounts of those levies including, where necessary, the method for calculating them; and
- the period for which those levies must be paid.

The table provides that each kind of OEI levy applies to a feasibility licence holder for each 12 month period they hold that licence. A note to the table clarifies the intention that this period will first commence on the day the licence is granted, and will then renew annually on that same day for every subsequent year the licence is held. In this way the 12 month period will be unique to each licence holder, rather than following a calendar or financial year.

It is expected that the recipients of each of the different kinds of levy will publish information clarifying how feasibility licence holders should pay the relevant levy and when these payments will be due.

Note that the term “feasibility licence” is defined in section 8 of the OEI Act.

Section 6 – Levies imposed on holders of commercial licences

The table in section 6 of the OEI Levies Reg sets out, for the purposes of subsection 8(2) and section 9 of the OEI Levies Act:

- the different kinds of OEI levy imposed on commercial licence holders;
- the amounts of those levies including, where necessary, the method for calculating them; and
- the period for which those levies must be paid.

The table provides that each kind of OEI levy applies to a commercial licence holder for each 12 month period they hold that licence. A note to the table clarifies the intention that this period will first commence on the day the licence is granted, and will then renew annually on

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that same day for every subsequent year the licence is held. In this way the 12 month period will be unique to each licence holder, rather than following a calendar or financial year.

It is expected that the recipients of each of the different kinds of levy will publish information clarifying how commercial licence holders should pay the relevant levy and when these payments will be due.

Note that the term “commercial licence” is defined in section 8 of the OEI Act.

Section 7 – Levies imposed on holders of research and demonstration licences

The table in section 7 of the OEI Levies Reg sets out, for the purposes of subsection 8(2) and section 9 of the OEI Levies Act:

- the different kinds of OEI levy imposed on research and demonstration licence holders;
- the amounts of those levies including, where necessary, the method for calculating them; and
- the period for which those levies must be paid.

The table provides that each kind of OEI levy applies to a research and demonstration licence holder for each 12 month period they hold that licence. A note to the table clarifies the intention that this period will first commence on the day the licence is granted, and will then renew annually on that same day for every subsequent year the licence is held. In this way the 12 month period will be unique to each licence holder, rather than following a calendar or financial year.

It is expected that the recipients of each of the different kinds of levy will publish information clarifying how research and demonstration licence holders should pay the relevant levy and when these payments will be due.

Note that the term “research and demonstration licence” is defined in section 8 of the OEI Act.

Section 8 – Levies imposed on holders of transmission and infrastructure licences

The table in section 8 of the OEI Levies Reg sets out, for the purposes of subsection 8(2) and section 9 of the OEI Levies Act:

- the different kinds of OEI levy imposed on transmission and infrastructure licence holders;
- the amounts of those levies; and
- the period for which those levies must be paid.

The table provides that each kind of OEI levy applies to a transmission and infrastructure licence holder for each 12 month period they hold that licence. A note to the table clarifies

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the intention that this period will first commence on the day the licence is granted, and will then renew annually on that same day for every subsequent year the licence is held. In this way the 12 month period will be unique to each licence holder, rather than following a calendar or financial year.

It is expected that the recipients of each of the different kinds of levy will publish information clarifying how transmission and infrastructure licence holders should pay the relevant levy and when these payments will be due.

Note that the term “transmission and infrastructure licence” is defined in section 8 of the OEI Act.

PART 3 – ADJUSTING LEVIES

Part 3 of the OEI Levies Reg provides, for the purposes of section 9 of the OEI Levies Act, a method for calculating any necessary adjustments to the amounts of OEI levy payable by OEI licence holders. Note that the handling of levy refunds, where these arise, is prescribed in section 215 of the OEI Reg.

Section 9 – Licences held for parts of payment periods

Subsection 9(1) of the OEI Levies Reg provides that section 9 applies where a person holds a licence for only part of a period for which an OEI levy is payable under Part 2 of the OEI Levies Reg, because the licence is cancelled or surrendered before the end of that period. In practical terms, this will occur when a licence holder pays a levy for a prospective 12 month period under sections 5 to 8 of the OEI Levies Reg, but the licence is subsequently cancelled or surrendered prior to the expiry of that 12 month period. This will leave the licence holder with a levy that is too high for their actual circumstances.

Subsection 9(2) provides that in the circumstances described in subsection 9(1), the amount of levy payable is adjusted downwards on a pro rata basis to reflect the number of days in the period the licence was actually held. For example, if a licence holder paid a levy for a 12 month (non-leap year) period but then surrendered their licence 61 days into this period, the actual amount of levy payable by them would be reduced by multiplying the original levy by the ratio of 61 over 365. The licence holder would then be entitled to a refund of any overpaid levy amount under section 215 of the OEI Reg.

Note that the cancelling or surrendering of licences is covered in sections 73 and 74 of the OEI Act.

Section 10 – Licence areas varied during payment periods

Subsection 10(1) of the OEI Levies Reg provides that section 10 applies where an OEI levy is calculated for a particular period by reference to a licence area under Part 2 of the OEI Levies Reg, but the licence area changes before the end of that period. In practical terms, this will occur when a licence holder pays a levy for a prospective 12 month period under sections 5 to

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8 of the OEI Levies Reg that is based on a particular licence area, but the licence area changes prior to the expiry of that 12 month period. This will leave the licence holder with a levy that is either too high or too low for their actual circumstances.

Subsection 10(2) provides that in the circumstances described in subsection 10(1), the amount of levy payable is adjusted on a pro rata basis to reflect the number of days in the period before and after the licence area was varied. For example, if a licence holder paid a levy for a 12 month (non-leap year) period but then increased their licence area 61 days into this period, the actual amount of levy payable by them would be calculated in three stages: (i) the first “block” of levy, calculated using the original licence area, would be multiplied by the ratio of 60 over 365; (ii) the second “block” of levy, calculated using the new licence area, would be multiplied by the ratio of 305 over 365; (iii) finally, the amounts calculated in (i) and (ii) would be added together to find the new levy payable.

Where a licence area has increased, the licence holder will need to pay any additional levy under subsections 210(3) and (4) of the OEI Reg. Where a licence area has decreased, the licence holder will be entitled to a refund of any overpaid levy amount under section 215 of the OEI Reg.

For clarity, sections 9 and 10 can operate in conjunction with each other. That is, there may be circumstances in which a levy that is adjusted downwards under section 9 must also be further adjusted under section 10 to reflect a variation in licence area that occurred during the shortened licence period.

Statement of Compatibility with Human Rights

Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011

Offshore Electricity Infrastructure (Regulatory Levies) Regulations 2022

This legislative instrument is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Overview of the legislative instrument

The *Offshore Electricity Infrastructure (Regulatory Levies) Regulations 2022* prescribes levies that are payable by certain persons engaging in offshore electricity infrastructure activities.

Human rights implications

The regulations do not engage any of the applicable rights or freedoms.

Conclusion

The regulations are compatible with human rights as they do not raise any human rights issues.

The Hon Tim Wilson MP

Assistant Minister to the Minister for Industry, Energy and Emissions Reduction